1939 General Letter No. 1

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Washington, D. C.

November 15, 1938

To all Administrative Officers,
Agricultural Adjustment Administration,
Southern Region

The following questions and answers regarding the referenda to be held December 10, 1938, on cotton and flue-cured tobacco marketing quotas are submitted for your information.

1. Q. Is a minor eligible to vote, provided he produced cotton or tobacco in 1938?

   A. Yes. There is no age limit with respect to eligibility to vote in the referenda. If a minor was engaged in the production of cotton or flue-cured tobacco in 1938, he is eligible to vote in the respective referendum unless he was merely working for his father or some other person and was not a party to the lease or cropping agreement.

2. Q. Will a person working on a farm and being reimbursed in part with money and in part with the proceeds from a fixed acreage of cotton or tobacco be eligible to vote?

   A. Yes. He is to be considered a sharecropper with respect to the acreage from which he obtains the cotton or tobacco or its proceeds.

3. Q. In the event a person who produced cotton or tobacco in 1938 dies, will his widow or any member of his family be eligible to vote by virtue of such relationship to the deceased?

   A. No.

4. Q. Is the administrator of an estate eligible to vote by virtue of the fact that the estate owns a farm on which cotton or tobacco was produced in 1938?

   A. If a crop of cotton or flue-cured tobacco was produced in 1938 on land which was part of an estate and the estate shared in the proceeds of such crop, the executor or administrator of the estate may vote in the respective referendum by virtue of his office. Only one vote can be cast for an estate regardless of the number of heirs or the number of farms owned by the estate.

5. Q. If a person is administrator for more than one estate, may he vote more than once?

A. A person who is a legal representative of several estates may cast a vote for each estate which is eligible to have a vote cast in its behalf.

6. Q. Will a person be considered eligible to vote who in 1938 had made arrangements to produce a crop of tobacco in 1938 and had a tobacco plant bed but was unable to set out a crop because of blue mold or unavoidable circumstances.

A. Yes, since by making such preparations he is considered to have been engaged in the production of tobacco.

7. Q. If a man owns a cotton or tobacco farm in his own right and his wife also owns a cotton or tobacco farm in her own right, is each eligible to vote in the respective referendum?

A. Yes, if each of them was engaged in producing cotton or flue-cured tobacco in 1938.

8. Q. May a landlord owning two or more farms vote more than one time in each referendum?

A. No. A producer is eligible to vote only once in each referendum.

9. Q. Is the owner of land rented to another for cash, standing rent, or fixed rent in 1938 eligible to vote?

A. A cash tenant or a standing-rent or fixed-rent tenant who produced cotton or tobacco in 1938 is eligible to vote, but his landlord is not eligible unless such landlord was engaged in producing cotton or tobacco in 1938.

10. Q. In case an eligible voter is sick or absent for any other reason on the day of the referenda, may one of the community referendum committeemen go to the voter's home and obtain the ballot, or may his wife or other representative vote for him?

A. No.

11. Q. Is performance under the 1938 Agricultural Conservation Program a requirement in order to be eligible to vote?

A. No.

12. Q. Can more than one voting place be designated in a particular community?

A. No.

13. Q. Can more than three persons be designated to be in charge of one voting place?

A. No. Only three community referendum committeemen will be designated to conduct the referendum in the community.

14. Q. Will it be necessary to provide voting booths in which ballots may be marked?

A. No. While the use of voting booths is not required, the community referendum committee and county committee should see to it that a place is provided in which each voter may mark his ballot without anyone seeing how he votes.

15. Q. At what time should the polls be opened and closed?

A. The polls should be open for a uniform time in each county if possible, and should be opened not later than 9:00 a.m., Saturday, December 10, 1938, and closed not earlier than 5:00 o'clock p. m., the same day, local standard time, unless the state committee fixes a later hour for closing.

16. Q. Should the community referendum committee provide markers or have persons available at the polls to assist the eligible voters who cannot read?

A. No. However, upon the request of the producer in such cases the community referendum committee should show him how to mark his ballot so as to cast a "Yes" vote and so as to cast a "No" vote and told the meaning of each. No other persons should be kept or allowed at the polls for such purpose. After being so instructed the voter should mark his own ballot without assistance.

17. Q. Where will a person vote in the event his residence is in a town or city and his farm is in a different community or township?

A. Any person eligible to vote may do so in any community he desires, provided he has not voted elsewhere. If the community referendum committee cannot determine that he has not voted in another community, it should "challenge" the ballot as indicated in the applicable instructions.

18. Q. Is a county agricultural conservation association authorized to pay the community referendum committeemen for their services

in holding the referendum?

A. Yes.

19. Q. What is the rate of pay for county committeemen and for community referendum committeemen in holding the referendum?

A. County committeemen will be paid the usual rate of $4.00 per day. Community referendum committeemen will be paid at the rate of $3.00 per day. All expenses will be charged to the county agricultural conservation association.

20. Q. In preparing the register in the county office, on what register should the landlord's name appear when he owns two or more farms?

A. It is suggested that the name be placed on the register for the community in which the landlord resides.

21. Q. Should the county committee accept as correct the summary as submitted by the community referendum committee or make a recount of the ballots?

A. Unless the county committee has reason to question the accuracy of the tabulation by the community referendum committee, it need not examine the voted ballots other than those "challenged".

Very truly yours,

I. W. Duggan

I. W. Duggan
Director, Southern Division

1939 General Letter No. 2

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Washington, D. C.

November 28, 1938.

To All Administrative Officers,
Agricultural Adjustment Administration,
Southern Region:

Questions have been raised regarding the $10,000 limitation on payments with respect to Agricultural Conservation Programs formulated under subsection (b) of Section 8 of the Soil Conservation and Domestic Allotment Act. This is found in Section 8(e)(added by Section 102 of the Agricultural Adjustment Act of 1938, approved February 16, 1938) and reads as follows:

> "Beginning with the calendar year 1939, no total payment for any year to any person under such subsection (b) shall exceed $10,000. In the case of payments made to any individual, partnership, or estate on account of performance on farms in different States, Territories, or possessions, the $10,000 limitation shall apply to the total of the payments for each State, Territory, or possession, for a year and not to the total of all such payments."

Under the wording of this provision, this $10,000 limitation applies to all payments for any year made pursuant to programs furmulated under Section 8(b) of the Soil Conservation and Domestic Allotment Act and will apply for the first time with respect to the 1939 Agricultural Conservation Program, the 1939 Range Conservation Program, the 1939 Naval Stores Conservation Program, and the 1939 Conservation Program for the Insular Region. The limitation will apply to the total of all payments made under the named programs regardless of when these payments are made. Any payments made in connection with the 1938 or previous programs under the Soil Conservation and Domestic Allotment Act will be disregarded in applying the $10,000 limitation notwithstanding the fact that a part or all of the payments for a previous year may be made on or after January 1, 1939. The $10,000 limitation is not applicable to payments which will be made under the Price Adjustment Act of 1938 or to payments under the 1937 Cotton Price Adjustment Payment Plan. Consequently the payments under the 1939 programs enumerated above would not be affected in applying the limitation by the amount of any payment under the Price Adjustment Act of 1938 or the 1937 Cotton Price Adjustment Payment Plan, nor would a payment under the latter two be affected by either the limitation or the amount of any payment under the enumerated programs to which the limitation is applicable.

In the case of an individual, partnership, or estate, the $10,000 limitation applies separately to the total payments for each State,

Territory, or possession while in the case of a corporation, an association, or any person other than an individual, partnership, or estate the total of all payments on account of performance on farms and ranches and turpentine places in all the States, Territories, and possessions cannot exceed $10,000.

The burden of proof to establish a right to receive a payment rests upon the applicant in each case. In establishing a right to receive a payment under the programs to which the $10,000 limitation is applicable, each applicant will be required to state in his application for payment whether he has any interest in any payments on account of performance on any other farm, ranch, or turpentine place in the county, in other counties in the State, and in other States, Territories, or possessions.

In cases where the applicant is an individual, partnership, or estate, the State Agricultural Conservation Committee, acting through the Administrative Officer in Charge, is responsible for applying the limitation to the total payment to the individual, partnership, or estate on account of performance in the State. Cases where the applicants are other than an individual, partnership, or estate will be classified into two groups; namely, (1) those where the applicant has an interest in payments on account of performance in a single State, and (2) those where the applicant has an interest in payments on account of performance in more than one State, Territory, or possession. In the case of applicants coming within the first group, the State Committee, acting through the Administrative Officer in Charge, is charged with the responsibility of assembling the required documentary evidence in other that payments may be computed and limited to $10,000 in accordance with the provisions of the statute. Where the applicant comes within the second groups, the applications for payment and the required documentary evidence will be forwarded by the Administrative Officer in Charge to the Director of the Southern Division in order that the total payment to each applicant may be computed in accordance with the statutory limitation, A procedure in this connection will be issued at a later date.

Each and every individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or any agency of a State will ordinarily be considered as a separate person in the application of the $10,000 limitation and, in the case of a person other than an individual, partnership, or estate, would be eligible to receive the maximum payment of $10,000 on account of performance on all its farms and ranches and turpentine places wherever located, or, in the case of an individual, partnership, or estate, would be eligible to receive the maximum payment of $10,000 on account of performance in each State, Territory, or possession, irrespective of the payments which may be made to other persons having a joint or common interest or which may be made to individual members of a partnership, firm, or association, or individual stockholders in a joint-stock company or corporation, or separate beneficiaries or fiduciaries of a trust or estate, in their individual capacities. However, the contrary would be true in cases where a partnership, firm, joint-stock company, corporation, association, trust, or estate has been created, or is being

used, as a scheme to evade the limitation or has been dissolved, abandoned, or liquidated as a scheme to avoid the effect of the limitation.

A corporation which was created subsequent to February 16, 1938, the date of the enactment of said Section 8(e), and which applies for a payment will be considered prima facie to have been formed, or used, to evade the $10,000 limitation and the corporation will have the burden of proof to establish the contrary if the corporation (1) is owned or controlled by an individual or another corporation which is also applying for payment, or (2) owns or controls another corporation which is also making application for payment, or (3) has a common directorate or common management with another corporation which is making application for payment. Under similar conditions a corporation created prior to February 16, 1938, which had been dormant or inactive and applies for payment would be considered prima facie to have become active, or to have been used, as a scheme or device to evade the limitation. Other situations will cause the presumption to arise that two or more organizations were created, or are being used, as a scheme or device to evade the limitation. If it develops that two or more organizations were created, or are being used, in an effort to evade the $10,000 limitation, the organizations will be considered as a single person.

A partnership which was formed subsequent to February 16, 1938, and which applies for payment will be considered prima facie to have been formed, or used, to evade the limitation and the partnership will have the burden of proof to establish the contrary if the partnership has among its members a partner who makes application for payment as an individual or who is a member of a partnership which makes application for payment. Similarly, where a partnership in existence prior to February 16, 1938, was dissolved subsequent to that date, and the partners form new partnerships between themselves, or between themselves and others, the new partnerships so formed will be considered prima facie to have been formed, or used, to evade the $10,000 limitation and the partnerships will have the burden of proof to establish the contrary. An analogous situation would be presented in the case of members of a partnership who apply for payment in their individual capacities after the partnership has been terminated and the circumstances indicate that the partnership was terminated in view of the $10,000 limitation. The presumption would also arise in a case where an inactive partnership formed prior to the enactment of the limitation applies for payment and the members thereof also apply for payment in their individual capacities. Other circumstances may justify invoking the presumption. Where one or more partnerships were created, or are being used, to evade the limitation, the existence of the partnership as a separate person will be disregarded in making payments.

A trust created subsequent to February 16, 1938, which applies for payment will be considered prima facie to have been created, or used, to evade the $10,000 limitation if it has a common beneficiary, settlor, or creator, or a common fiduciary with another trust which is making application for payment or if it has a beneficiary who is making application for payment in his individual capacity. Under similar circumstances, a trust created prior to the enactment of the limitation which had been dormant

and which applies for payment will be considered to have been used to evade the limitation. Likewise, where a trust in existence prior to February 16, 1938, was dissolved subsequent to that date, and new trusts are created with a common beneficiary, a common settlor or creator, or a common fiduciary, or a beneficiary who applies for payment in his individual capacity will be considered prima facie to have been formed, or used, to evade the $10,000 limitation. Where the presumption arises, the trust will have the burden of proof to establish the contrary. In other situations it may be that the same presumption would arise. Where the trust is created, or used, as a scheme or device to evade the limitation, the separate existence of the trust will be disregarded.

Since the presumptions referred to above are not conclusive but rebuttable, the individual, partnership, firm, joint-stock company, corporation, association, trust, or estate against whom the presumption arises would not be precluded by the $10,000 limitation from receiving payments which it may otherwise be eligible to receive if it establishes the fact that its formation or use was bona fide and was not designed as or did not have the effect of an evasion of the limitation. The partnership, firm, joint-stock company, corporation, association, trust, or estate against which the presumption arises would have to show, among other things, its name, the location of the business, the identity of the persons by whom it is owned or controlled, any special stipulations as to the purpose for which it was created, whether it owns or controls or is owned or controlled by another entity which is making application for payment, whether it has a common directorate or management with another entity which is making application for payment, the rights, liabilities, and duties of the persons having an interest therein, the date of its creation, and, in the case of a trust, the identity of the creator or settlor and of each beneficiary and a copy of the will in case it is a testamentary trust. It would also be necessary to show the identity of any individual who participates directly in its management, control, profits, or benefits, who is making application for payment as an individual. In addition, a statement by an active member or officer showing whether it is being used as a scheme or device to evade the limitation would probably have to be submitted.

What has been said above is by no means to be considered an exhaustive enumeration of the circumstances which might arise that would cause a partnership, firm, joint-stock company, corporation, association, trust, or estate not to be considered as a separate person in the application of the $10,000 limitation unless and until the contrary is affirmatively established. What has been said is to be considered as suggestive of the situations which may arise and would require the State Committee or the County Agricultural Conservation Committee to invoke the presumption in passing on any application for payment. It should also be remembered that each applicant is in a position to know whether he has adopted any scheme or device to evade the limitation, or which would have the effect of evading the limitation, and should further know that the presentation of a fraudulent claim against the Government under such circumstances may operate to defeat any right to receive any payment which he might otherwise have acquired. The rule is simply this: each and every partnership, firm, joint-stock company, corporation, association, trust, or estate

will ordinarily be considered as a separate person in the application of the $10,000 limitation unless it was created, or is being used, as a scheme to evade the limitation. In each case the right of an applicant to receive a payment must be tested by the facts and he is charged with the responsibility of proving this right.

The changing of rental agreements from a crop-share basis to a cash or fixed-commodity-payment basis ordinarily will not be regarded as a scheme or device to evade the $10,000 limitation. However, fictitious transfers of land and fictitious rental agreements will be disregarded and the facts as they actually exist and the real interests will be followed in the examination of any application for payment and the $10,000 limitation applied as though the fictitious transfers and rental agreements were not in existence. Likewise, rental agreements on a cash or fixed-commodity-payment basis which differ radically from the cash or fixed-commodity-payment rental agreements commonly entered into in the community or locality may well cause a presumption to arise that the rental agreements have been adopted, or are being used, to evade the limitation, and the burden of proof to establish the contrary will rest upon the parties alleging the rental agreements as a basis for their right to receive a payment.

Under the law as it now stands, it would not be possible for a landlord or owner who rents his land to tenants or sharecroppers for a share of the crops and who is, therefore, considered a producer within the meaning of the conservation programs to receive a payment in excess of the maximum limited by the statute. However, the payments to the tenants or sharecroppers would not be affected by the application of the limitation to their landlord, provided, of course, the payment to any one tenant or sharecropper did not exceed the maximum limit.

Very truly yours,

I. W. Duggan

I. W. Duggan,
Director, Southern Division.